IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24-08-2007

Coram :

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.6619 of 1995

M.Syed Nizam Ali … Petitioner

vs.

1. The Accountant General (A & E)
Office of the Principal Accountant General (A & E)
261, Anna Salai, Madras - 18.

2. The Registrar General
High Court, Madras.

3. The State of Tamil Nadu
Rep. by its Secretary to Government,
Finance Department,
Secretariat, Chennai - 9.

4. The State of Tamil Nadu
Rep. by its Secretary to Government,
Home (Courts) Department,
Secretariat, Chennai - 9. .. Respondents
(2nd respondent impleaded as per
order dated 11.6.07 in WP.NO.6619/95
and R-3 & 4 impleaded asper order
dated 13.6.2007 in WP.No.6619/95)

Writ Petition, seeking certiorarified mandamus is filed by the petitioner, under Article 226 of the Constitution of India, seeking direction to call for the records, of the first respondent herein relating to letter No.PV.1/Pen.2/IVP/329-103/93-94/1188, dated 23.07.1993 and also the endorsement dated 07.06.1994 in the covering letter, dated 29.03.1994, and quash the same, consequently direct the first respondent to include the personal pay, as per G.O.664, dated 24.08.1992 and G.O.873, dated 27.12.1993 and Government Letter No.83256 A/PC 93-1, dated 18.01.1994 and letter No.27418/PC 94-1, dated 07.04.1994 and to pay the petitioner's pension, other terminal benefits and also the arrears including the amount deducted / withheld, together with 18% interest per annum.

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For Petitioner : Mr.K.Chandrasekar for
M/s.Row & Reddy.

For Respondents : Mr.Ravikumar A.C.G.S.C for R1
Mr.M.Dhandapani, Spl.G.P for R2 to R4

O R D E R

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(Order of the Court was made by S.TAMILVANAN, J.)

This writ petition has been filed, challenging the order, dated 23.07.1993 in letter No.PV.1/Pen.2/IVP/329-103/93-94/1188 and the endorsement dated 07.06.1994, which was marked as Exs. A and B respectively and quash the same. The petitioner has also consequently prayed to direct the first respondent to include the personal pay, as per G.O.Ms.No.664, dated 24.08.1992 and G.O.Ms.No873, dated 27.12.1993 and Government Letter No.83256 A/PC 93-1, dated 18.01.1994 and letter No.27418/PC 94-1, dated 07.04.1994 and to pay the petitioner's pension, other terminal benefits and also the arrears including the amount deducted / withheld, together with interest.

2. It is not in dispute that the petitioner herein joined the Judicial Ministerial Service as Junior Assistant in the year 1958, promoted to the post of Head Clerk on 10.06.1985 and retired as Central Nazir, on 31.08.1993, after attaining the age of superannuation. According to the petitioner, while he was working as Head Clerk, his pay scale was Rs.905-1545, as per IV Pay Commission, which was subsequently, revised to Rs.1600-2600, as per V Pay Commission and that his pay had been fixed in the pay scale of Rs.905-1545, by office order, dated 10.06.1985, on which date, he was promoted as Selection Grade Head Clerk. When the petitioner was about to retire on 31.08.1993, the impugned order, dated 23.07.1993 by the first respondent was issued directing to recover the money, on the ground that the same was overpaid and fixed his pension, without taking into account the personal pay. As per letter, dated 27.08.1993 of the Subordinate Judge, Tiruvannamalai, the pay drawing officer of the petitioner, it was informed the first respondent herein that the petitioner was already drawing the salary in the pay scale of Rs.905-1545 (pre-revised) at the time of implementation of G.O.Ms.No.664, dated 24.08.1992 and the corresponding scale, as per V Pay Commission was Rs.1600-2600. The petitioner herein was drawing the said pay in the revised Selection Grade Scale and according to him, he was entitled to personal pay. The first respondent, by his letter, dated 07.10.1993 rejected the claim of the petitioner, on the ground that the existing pay scale would refer only the ordinary scale and as such, he was not eligible for personal pay. Subsequently, on 28.09.1993, the petitioner made a representation to the first respondent, referring G.O.Ms.No.664, dated 24.08.1992 and claimed that he was entitled to personal pay and that his pension should be fixed, taking into account of his personal pay and also pleaded that the recovered amount to be returned to him, but contrary to

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that, the first respondent passed an order, stating that the petitioner was not eligible for personal pay. Aggrieved by which, the petitioner herein has preferred this writ petition.

3. According to the respondents, as per G.O.Ms.No.664, dated 24.08.1992 and G.O.Ms.No.873, dated 27.12.1993, personal pay was granted to the employees on the scales of pay of the employees, who were appointed or promoted to the scale of pay prior to 27.06.1989 and in the clarification letter, dated 07.04.1994 in Lr.No.27418/TC/94-1, the Government has clarified that if an employee working as on 01.08.1992, in a post to which 5% personal pay benefit is not available, then he would be eligible for 5% personal pay. According to the first respondent, the date for extending the benefit of personal pay in the clarification letter was in order and the third respondent, by letter dated 27.07.1995 confirmed the stand taken by the first respondent in dissolving the personal pay.

4. It is not in dispute that the Government have issued orders in G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24.08.1992, considering the job responsibility and the importance of the work entrusted to the categories in the new scale of pay Rs.775-1030, Rs.950-1100, Rs.975-1660, Rs.1200-2040 and Rs.1600-2660 and decided to grant personal pay at 5% on the basic pay to all the categories of staff in the above scales of pay computed as on 01.08.1992. The said personal pay would be absorbed in the fitment procedure evolved whenever the next Pay Commission is constituted.

5. As per the order issued by the third respondent in G.O.Ms.No.873, Finance (Pay Cell) Department, dated 27.12.1993, it has been substituted in the existing paragraph number 4 of G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24.08.1992 as follows :

> " 4. At the same time the plea of these employees for Government to extend some sympathetic consideration has been taken note of. Government considering that these categories should be positively motivated in undertaking important items of work entrusted to them. Further job responsibilities of these categories require due recognition taking into account the level of pay scales of these categories staff in the pre-revised pay scales, the Government have decided to grant 5 percent of basic pay as personal pay to all those employees who actually moved from the following pre-revised scales of pay to the revised scales of pay i.e, to all those who were appointed / promoted prior to 27.06.1989 (i.e) the date of issue of orders introducing the fifth pay commission scales of pay :
>
> i) All employees in the pre-revised scale of pay at Rs.475-775 moving over the revised scale of pay of Rs.775-1030.
> ii) All employees in the pre-revised scale of pay of

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Rs.610-1075 moving over to the revised scale of pay of Rs.950-1500 or Rs.975-1660.

iii) All employees in the pre-revised scale of pay of Rs.705-1230 moving over to the revised scale of pay of Rs.1200-2040 and

iv) All employees in the pre-revised scale of pay of Rs.905-1545 moving over to the revised scale of pay of Rs.1600-2660."

It is clear that the crucial date for considering the appointment or promotion for the purpose of fixing the pay scale, as per G.O.Ms.No.873, Finance (Pay Cell) Department, dated 27.12.1993 is prior to 27.06.1989.

6. The petitioner herein was promoted as Head Clerk in the pay scale of Rs.780-1385 and was granted Selection Grade pay in the scale of Rs.905-1545 with effect from 10.06.1985. As per G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24.08.1992, those who were given pay scale of Rs.905-1545 prior to the revision would be in the pay scale of Rs.1600-2660. Accordingly, the petitioner's pay was also fixed by giving 5% personal pay. It has been clearly stated in the letter of the Subordinate Judge, Tiruvannamalai, dated 17.08.1993, the pay drawing officer that the petitioner was drawing pay scale of Rs.905-1545, while he was working as Central Nazir in the Subordinate Court, Tiruvannamalai, and admittedly, he retired on 31.09.1993 on attaining superannuation, which is not in dispute in the writ petition.

7. The Principal Subordinate Judge, Tiruvannamalai, the pay drawing officer of the petitioner, by his letter Dis.No.576/2006, dated 11.06.2007 on verifying the service register of the petitioner has clearly stated that the petitioner was promoted to the post of Head Clerk, Sub Court, Vellore on 31.05.1985 in the time scale of pay of Rs.450-20-590-25-740-30-800 and his pay was fixed in the pay scale of Rs.905-45-1445-50-1545 with effect from 10.06.1985 by the Principal District Munsif, Tiruvannamalai, by order No.732/92, dated 10.08.1992 as per the Accountant General's Letter. In support of the said contention, three volumes of the service register, pertaining to the service of the petitioner has also been sent to the first respondent and subsequently to this Court for perusal. The learned District Judge, Tiruvannamalai District by his letter in Dis.No.2748107, dated 12.06.2006 on verifying the entries made in the service register of the petitioner concur the statement of the Principal Subordinate Judge, Tiruvannamalai. As discussed earlier, it is not in dispute that the petitioner herein retired as Central Nazir, Sub Court, Tiruvannamalai, on attaining superannuation in the afternoon on 31.09.1993.

8. As per G.O.Ms.No.873, Finance (Pay Cell) Department, dated 27.12.1993, the petitioner was drawing the pay scale of Rs.905-45-1445-50-1545 with effect from 10.06.1985. As he was promoted and drawing the aforesaid pay scale, prior to 27.06.1989, we are of the considered view that the aforesaid Government Order is applicable to the petitioner for fixing the pay scale.

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9. As per Clause IV of G.O.Ms.No.873, Finance (Pay Cell) Department, dated 27.12.1993, all employees in the pre-revised scale of pay of RS.905-1545 are entitled to the revised pay scale of Rs.1600-2660. Therefore, we are of the considered view that the petitioner is entitled to get the pay scale, as per G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24.08.1992, as amended by substitution in G.O.Ms.No.873, Finance (Pay Cell) Department, dated 27.12.1993. But, we are of the view that the petitioner is not entitled to get 18% interest for the arrears payable to him by the respondents 3 and 4, as claimed by him in the writ petition.

10. However, considering the facts and circumstances of the case and the bank rate of interest, we find it reasonable to direct the respondents 3 and 4 to pay the entire arrears, payable to the petitioner with 6% interest and the same shall be paid within three months from the date of receipt of the copy of this order.

11. With the above direction, this writ petition is disposed of. However, there is no order as to costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Accountant General (A & E)
   Office of the Principal Accountant General (A & E)
   261, Anna Salai, Madras - 18.

2. The Registrar General
   High Court, Madras.

3. The Secretary to Government
   State of Tamil Nadu
   Finance Department,
   Secretariat, Chennai - 9.

4. The Secretary to Government
   State of Tamil Nadu
   Home (Courts) Department,
   Secretariat, Chennai - 9.

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5. The District Judge,
   Tiruvannamalai District,
   Tiruvannamalai.

6. The Principal Subordinate Judge,
   Tiruvannamalai.

7. The Section Officer,
   Legal cell,
   High court, Madras.

+ 1 cc to Mr.Row & Reddy Advocate SR.NO.53102
+ 1 cc to Mr.T.Ravikumar A.C.G.S.C SR.NO.53175

DM(CO)
RD 6.9.07

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